IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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Dwarka Das vs. State of Rajasthan & Ors.

S.B. CIVIL WRIT PETITION NO.34/2003 UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER : 3.7.2007

PRESENT
HON'BLE MR.PRAKASH TATIA,J.

Mr.Manish Shishodia,for the petitioner.
Mr.OP Boob, Addl. GA for the respondent-State
Mr.MR Singhvi, for respondent no.5.

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BY THE COURT:

Heard learned counsel for the parties.

The petitioner has sought relief in this writ petition that an appropriate writ, order or direction be issued to the respondents no.2 to 4 for registering a case for the offence under Section 451, 379 IPC and investigate the case and recover the movable property removed by the respondents, i.e., the officers and servants of Nathdawara Temple Board and for further direction that possession of the property be restored to the petitioner.

Brief facts of the case are that according to the petitioner, the property mentioned in the writ petition is the ownership property of the petitioner. The property was self-acquired by the petitioner's adoptive mother Smt. Gomti Bai in the year 1932. It is said that petitioner was in possession of the said property as he was adopted by Smt. Gomti Bai in the year 1937. After the death of Smt. Gomti Bai, the petitioner is in exclusive possession of the property in dispute since 15.1.1990. In the property in dispute the goods worth Rs.70,000/- to Rs.80,000/- were lying. The petitioner since was residing at Mumbai and whenever petitioner used to come to the Nathdawara, he used to occupy the property. In the year 1990, the respondent Nathdawara Temple Board put their locks over the petitioner's lock on the property in dispute and tried to dispossess the petitioner whereupon the petitioner filed a civil suit for mandatory injunction alongwith an application for interim relief. In the said suit, Commissioner was appointed by the civil court on 24th Nov., 1990, who inspected the site and prepared the site inspection report. However, copy of this report has not been placed on record by the petitioner alongwith the writ petition. According to the petitioner in the Commissioner's report there is a clear mention of locks of the petitioner Dwarka Das. In the suit, the Board took a false stand that property is of the ownership of Shree Nathji Temple and Smt. Gomti Bai was in possession, but after the death of Smt. Gomti Bai, the respondents put their locks. It is stated by the

petitioner that the trial court issued a mandatory injunction on 9.9.1991 asking the respondents to remove their locks from the property in dispute within 15 days and further directed the Board to not to interfere in the petitioner's possession over the property in dispute. It is stated that locks of the temple board were removed on 13.2.1992 as per the orders of the civil court and a report was also prepared on site on 13.2.1992. It is also submitted that the appeal against the injunction order was dismissed by the appellate court vide order dated 19th May, 1992.

According to the petitioner by taking advantage of summer vacation in civil court in absence of petitioner from Nathdawara, the officers and the employees of the respondent board with the help of their armed guards removed the locks from the property in dispute and took away the goods belonging to the petitioner. When the petitioner came to know about this fact, he sent his son Manohar Lal to Nathdawara, who in turn approached the SHO, Police Station, Nathdawara for lodging the FIR, but SHO refused to register the FIR. The petitioner gave a telegraphic information to the Superintendent of Police as well as DIG, Udaipur on 19th June, 2002. Copy of the telegram is Annex.3. Thereafter, the petitioner himself came to Nathdawara and approached the Superintendent of Police concerned, who directed him to appear before the Dy. Superintendent of Police. The petitioner approached the Dy.

Superintendent of Police on 9th July, 2002. The petitioner was directed to contact concerned Police Chowki, but no case against the accused was registered.

According to the petitioner the officers and the employees of the Nathdawara Temple Board committed cognizable offence, but the respondents did not register the FIR nor investigate the matter and, therefore, the direction be issued for registration of a FIR under Section 451 and 379 IPC and investigate the matter.

Learned counsel for the petitioner submits that in identical circumstances when commission of an offence was reported to the concerned police station and the case under Section 174 Cr.P.C. was registered, but investigation was not affected, this Court in S.B. Civil Writ Petition No.4688/2000 (Meera Singh Vs. State of Rajasthan & Ors., decided on 15.3.2001) directed the respondents to register the FIR and investigate the matter. In view of the above judgment of this Court, similar directions may be issued to the respondents.

The respondent State submitted reply to the writ petition and admitted that son of the petitioner Manohar Lal approached the SHO, Nathdawara and submitted an application for taking action against the employees, personal guard of the Nathdawara Temple

Board. This application was submitted on 19th June, 2002. The SHO, Nathdawara requested the petitioner to provide details with regard to the documents relating to the property, but those documents were not submitted by the petitioner. The concerned SHO, Nathdawara found that from the application it is not found that any cognizable offence has been committed and, thereafter, even then the petitioner himself came to Nathdawara and contacted the Superintendent of Police, District Rajsamand on 8th July, 2002 on petitioner's application, a note was appended by the Superintendent of Police, Rajsamand and matter was referred to the Dy. Superintendent of Police, Nathdawara by the Superintendent of Police, Rajsamand. It is stated that till time of filing of reply neither petitioner nor his son contacted Dy. Superintendent of Police, Nathdawara in relation to the petitioner's complaint. The matter was, thereafter, sent to the concerned Police Station again, which is duly registered in the dispatch register. The matter was investigated by ASI. He prepared a detail report on 25th Oct., 2002 after recording the statement of person concerned with Nathdawara Temple Board also. The concerned ASI submitted his report on 25th Oct., 2002 in the office of Dy. Superintendent of Police, Nathdawara on 30th Oct., 2002, who in turn discussed the matter with the Superintendent of Police, Rajsamand. It is stated that complete original complaint file was sent to the office of Addl. Superintendent of Police for his consideration on 27th Oct., 2002

again, who again considered the matter and the Addl. Superintendent of Police, Rajsamand satisfied with the action of the concerned ASI and returned the original case file on 24.2.2003. The contention of the respondents is that the petitioner himself did not cooperate for any investigation by making out sufficient allegation in his mere communication and thereafter did not submit any document needed.

Learned counsel for the respondents vehemently submitted that in fact there was only a report about the missing of some articles and taking over possession of the property by the Nathdawara Temple Board. That report was fully taken cognizance of and, thereafter, the matter was investigated. There was total non-cooperation of the petitioner and his son. They did not contact the concerned officers nor furnished details. Not only this, the facts in the writ petition are also vague. It is also submitted that it is not a case where the matter was not investigated by the concerned police station. It is also submitted that the petitioner himself admittedly filed the civil suit and obtained appropriate relief from the court as per the petitioner's averments in the writ petition itself. Despite that if he failed to obtain further relief from the civil court then in fact, it appears that petitioner wants to convert the civil dispute in a criminal case. It is also submitted that facts of the case of Meera Singh (supra) are entirely different. In that case, the

FIR was not registered and matter was not investigated. Here in this case, there was no formal FIR lodged by the petitioner and only a report was lodged. That report was insufficient for registration of a criminal case and, therefore, before that the petitioner and his son were directed to provide some specific facts and evidence, but they did not produce. In view of the above reasons and in view of the fact that the incident alleged to be of the year 2002 and where admittedly the plaintiff's suit was dismissed as admitted by the petitioner himself then it is not a case for holding further inquiry.

I considered the submissions of the learned counsel for the parties and perused the facts of the case. Undisputedly, the petitioner who claims that he is owner of the property and was in possession of the property approached the civil court, obtained the order for mandatory injunction and according to the petitioner the appeal against the said injunction order was dismissed and petitioner failed to disclose in the writ petition that why he did not sought relief for possession in the civil suit by moving appropriate petition. The petitioner further did not disclose why the petitioner did not follow the procedure as provided under the Code of Civil Procedure, which provides that in case, a case is not registered by the concerned SHO concerned Police Station then a criminal complaint can be filed upon which appropriate orders can be passed. The petitioner had effective alternative remedy of moving

the court for sending the matter to the concerned Police Station under Section 156(3) of the Cr.P.C. In the writ petition also, the facts are very vague and it appears that petitioner wanted to have direction from the court in a case where there was no necessity of any direction of the court under Article 226 of the Constitution of India as the direction could have been issued by the court having jurisdiction over the concerned area for any cognizable offence.

In view of the above reasons, I do not find any merit in the writ petition. Hence, the writ petition of the petitioner is dismissed.

(PRAKASH TATIA), J.

c.p.goyal/-